

Order

Entered: July 16, 2003

**Michigan Supreme Court
Lansing, Michigan**

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

2001-51

Proposed Amendment of Rule 404 of the Michigan Rules of Evidence

On order of the Court, this is to advise that the Court is considering alternative proposals to amend Rule 404 of the Michigan Rules of Evidence. Before determining whether either proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals, or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing by the Court before a final decision is made. The schedules and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of these proposals does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposals in their present form.

These proposals stem from a request of the Task Force on Domestic Violence to amend Michigan Rules of Evidence 404, 803, and 804 concerning evidence in domestic-violence cases. The amendments would address the admissibility of prior acts of domestic violence and of hearsay statements of a complainant-declarant. The Task Force's Report may be found at this website:

<http://www.michigan.gov/posthumus/1,1431,7-104--2975--,00.html>

The work of the Task Force is also reflected in pending legislation. Senate Bill 232 and Senate Bill 233 can be found at these websites:

<http://www.michiganlegislature.org/law/mileg.asp?page=getObject&objName=2003-SB-0232&userid=>

<http://www.michiganlegislature.org/law/mileg.asp?page=getObject&objName=2003-SB-0233&userid=>

Before entering this publication order, the Court consulted its Advisory Committee on the Rules of Evidence, which filed a report recommending against any modification of the Rules. Two Committee members dissented and recommended separate modifications of MRE 404. The Committee's report and the dissents are posted at:

www.courts.michigan.gov/supremecourt/resources/administrative/index.htm

[The present language of Rule 404 would be amended as indicated below by underlining for new text and strikeouts for text that would be deleted.]

[Alternative A]

Rule 404 Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) [Unchanged.]

(b) Other crimes, wrongs, or acts.

(1) [Unchanged.]

(2) In the prosecution of an offense involving domestic violence or interference with a report of an offense involving domestic violence, evidence of other acts involving domestic violence by the defendant against the same or another person or interference with a report of an offense involving domestic violence is admissible, unless found inadmissible under MRE 403. For purposes of this subrule, “domestic violence” has the meaning given in MCL 400.1501, and an “offense involving domestic violence” includes, but is not limited to, those crimes proscribed by MCL 750.81(2) and 750.81a(2).

~~(2)~~ (3) [Renumbered but otherwise unchanged.]

[Alternative B]

Rule 404 Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

(a) [Unchanged.]

(b) Other crimes, wrongs, or acts.

(1) [Unchanged.]

(2) In the prosecution of an offense involving domestic violence, evidence of other acts of domestic violence is admissible and may be considered for its bearing on any matter to which it is relevant.

~~(2)~~ (3) [Renumbered but otherwise unchanged.]

Staff Comment: The proposed amendment in Alternative A is a synthesis of provisions from other states, including Rule 404(b)(4) of the Alaska Rules of Evidence, Section 64.20 of the Minnesota Statutes, and Section 1109 of the California Evidence Code. The proposed amendment in Alternative B tracks the language of Rules 413 and 414 of the Federal Rules of Evidence.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2003, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2001-51. Your comments and the comments of others will be posted at www.courts.michigan.gov/supremecourt/resources/administrative/index.htm.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

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July 16, 2003

Corbin R. Davis

Clerk